

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

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COMMONWEALTH OF MASSACHUSETTS
by its DIVISION OF MARINE FISHERIES,

and

STATE OF NEW HAMPSHIRE, by its FISH
& GAME DEPARTMENT, DIVISION OF
MARINE FISHERIES,

Plaintiffs

v.

CIVIL ACTION NO.:
06-12110-EFH

CARLOS M. GUTIERREZ, in his official
capacity as Secretary of Commerce of the
United States, et al.,

Defendants.

* * * * *

ORDER

February 17, 2009

HARRINGTON, S.D.J.

Federal Defendants' Motion to Alter or Amend the Court's Order (Docket No. 39) is granted in part. The court issued a Memorandum and Order on January 26, 2009 temporarily suspending Framework 42 on the ground that the Federal Defendants ("Commerce") promulgated Framework 42 without seriously considering and analyzing the Mixed-Stock Exception Guideline. Mass. v. Gutierrez, No. 06-12110-EFH, 2009 WL 161232 (D. Mass. Jan. 26, 2009). Commerce had sixty (60) days to seriously consider and analyze the Mixed-Stock Exception, and the suspension was effective pending compliance with such order.

Commerce's failure to seriously consider and analyze a Guideline, namely the Mixed-Stock Exception, prior to promulgating Framework 42 must have consequences. Such a failure might have resulted in a flawed Framework, which is why the court directed Commerce to demonstrate that it has seriously considered and analyzed the Mixed-Stock Exception as to Framework 42.

The court understands that Commerce's failure to seriously consider and analyze the Mixed-Stock Exception primarily impacts the 2:1 Days at Sea ("DAS") counting system. Therefore, Federal Defendants' Motion to Alter or Amend the Court's Order (Docket No. 39) is GRANTED IN PART as follows:

1. Framework 42 is hereby reinstated except for those provisions relating to the 2:1 DAS counting system, which remain suspended for thirty-eight (38) days from the date of this order.

2. The Deadline for DAS Leasing is extended by thirty (30) days pursuant to the recommendation contained in the State Plaintiffs' Opposition to Federal Defendants' Motion Filed under Fed. R. Civ. P. 59(e) (Docket No. 44).

SO ORDERED.

/s/ Edward F. Harrington
EDWARD F. HARRINGTON
United States Senior District Judge